

Paul G. Shearer
1532 Meadows Drive
Lake Oswego, Oregon 97034
(503) 697-4378

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UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

PAUL G. SHEARER,)	
)	Case No. A03-0263 CV (JKS)
Plaintiff,)	(Consolidated)
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
GALE A. NORTON, Secretary of the)	
Interior, DEPARTMENT OF INTERIOR,)	<u>PLAINTIFF'S MOTION TO DISMISS</u>
and, NATIONAL PARK SERVICE,)	<u>OR STRIKE UNITED STATES'</u>
)	<u>MOTION FOR PARTIAL JUDGMENT -</u>
Defendants.)	<u>PARCELS 3, 14, 15, and 20</u>
)	

INTRODUCTION

The United States has filed a Motion for Partial Judgment –Parcels 3, 14, 15, and 20 (Docket 84) along with a Memorandum of Points and Authorities in support of its Motion for Partial Judgment – Parcels 3, 14, 15, and 20. (Docket 85). This motion seeks dismissal of several Parcels described in enumerated paragraphs in Shearer's First Amended Complaint on grounds that Shearer's interest consented in these Parcels is not compensable in an action brought pursuant to section 120 of the Act of November 14, 1997, Pub. L. No. 105-83, 111 Stat. 1543, 1564-66 ("Section 120").

ARGUMENT

Shearer moves to dismiss or strike the United States' Motion for Partial Judgment on

Parcels 3, 14, 15, and 20 (Docket 84) for the reason that United States has already litigated such issues in its Motion for Partial Summary Judgment on Consent filed 9/30/2005 (Docket 39) and Motion for Partial Summary Judgment on the Pleadings filed 12/28/2005 (Docket 71). The Court has already ruled on the above two motions and issued an Order filed 03/31/2006 (Docket 78). United States should not be allowed to relitigate issues already decided against it or introduce additional Parcels for which the issues have already been litigated in earlier Motions for Summary Judgment. If the government wanted to challenge the consent of Parcels 3, 14, 15, and 20, it should have named them in the earlier Motions or Summary Judgment where the issues of eligibility under Section 120 were being addressed, but it did not. All of the evidence cited in this new United States Motion for Summary Judgment and exhibits (Shearer's responses to USA Requests for Production) were available to United States long before it filed the prior Motions for Summary Judgment so United States cannot claim to be introducing new evidence. The Court Order (Docket 78) that ruled on the Motions for Summary Judgment (Docket 39 and 71) found that (page 2, paragraph 2) "Congress therefore offered to pay the owners the fair market value of their claims upon surrender of the property. Shearer accepted that offer as to all of his effected interests, with minor exceptions." The Order also clarifies (page 3 paragraph 2) "this Court is not anticipating how Shearer's claims will be valued with regard to what is and what is not real property or personal property." Therefore Shearer contends that this Court retains the jurisdiction in this case to determine which ownership interests consented by Shearer are valid ownership interests covered by Section 120 and what the final fair market value is for Shearer's interests consented under Section 120. Finally the Court Order states (page 3 paragraph 1) "The Court recognizes that the Government has made alternate arguments regarding some of the

claims and Shearer has conceded the force of those arguments and agreed to the dismissal of some of his claims. Those claims will be dismissed without prejudice by stipulation of the parties.” However the United States has not contacted Shearer regarding such a stipulation and has made no attempt to negotiate in good faith such a stipulation but instead has attempted to add new claims to the list of claims to be dismissed with this latest Motion for Partial Summary Judgment (Docket 84). The United States Motion for Partial Summary Judgment is simply a disguised Motion For Reconsideration attempting to revisit issues the Court has already ruled on. However the time for filing a Motion For Reconsideration has long passed and the Court should not allow the United States revisit these issues at this time.

CONCLUSION

For all of the above reasons, then plaintiff Paul Shearer respectfully requests that the Court Dismiss or Strike the Motion of the United States for Partial Summary Judgment on Parcels 3, 14, 15, and 20 (Docket 84).

This Cross-Motion is filed without prejudice to Shearer, and therefore Shearer reserves his right to oppose the Motion of the United States for Partial Summary Judgment on Parcels 3, 14, 15, and 20 (Docket 84) if the Court denies Shearer’s Cross-Motion. Therefore if the Court denies this Cross-Motion to Dismiss or Strike the Motion of the United States for Partial Summary Judgment on Parcels 3, 14, 15, and 20 (Docket 84), then plaintiff Paul Shearer reserves his right to file an Opposition and requests leave to respond on the merits by filing an Opposition to Motion of the United States for Partial Summary Judgment on Parcels 3, 14, 15, and 20 (Docket 84).

DATED at Lake Oswego, Oregon, this 10 day of July, 2006.

A handwritten signature in cursive script, reading "Paul G. Shearer", is written over a horizontal line.

Plaintiff
Paul G. Shearer
1532 Meadows Drive
Lake Oswego, Oregon 97034

CERTIFICATE OF SERVICE

I certify that a copy of the above documents was mailed, by first class mail, addressed to the persons at the addresses stated below on July 11, 2005.

Copy was also sent by email on July 11, 2006 to Paul Harrison and Dean Dunsmore.



Paul G. Shearer

Addressee(s):

US District Court
Clerk of Court
222 W. 7th Ave #4
Anchorage, AK 99513-7564
907-677-6100

Paul Harrison (copy)
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 561 – Ben Franklin Station
Washington, D.C. 20044
Email: paul.harrison@usdoj.gov
202-305-0299
202-514-8865 FAX

Dean K. Dunsmore (copy)
U.S. Department of Justice
Environment & Natural Resources Division
801 B Street, Suite 504
Anchorage, AK 99501-3657
Email: dean.dunsmore@usdoj.gov
907-271-5452
907-271-5827 FAX